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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

PETER NYGARD, Plaintiff and Appellant, v. ALLER JULKAISUT OY, Defendant and Respondent.	B168313 (Los Angeles County Super. Ct. No. SC072390)

APPEAL from an order of the Superior Court of Los Angeles County, Terry B. Friedman, Judge. Affirmed.

Nadrich & Associates and Martin A. Fine for Plaintiff and Appellant.

Haight, Brown & Bonesteel, Morton G. Rosen and Jules S. Zeman for Defendant and Respondent.

Plaintiff and appellant Peter Nygard (Nygard) appeals an order dismissing his defamation action against defendant and respondent Aller Julkaisut Oy (AJO) following the grant of AJO's motion to quash service of process.[1]

The essential issue presented is whether AJO, a Finnish magazine publisher, had sufficient contacts with California to be subject to either general or specific jurisdiction.

We conclude AJO's activities in California are not so substantial or wide-ranging as to give rise to general jurisdiction. Further, there is no basis for specific jurisdiction because there is no evidence AJO expressly aimed its conduct at or intentionally targeted California. Therefore, the order of dismissal is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Pleadings*.

After commencing this action on June 3, 2002, Nygard filed the operative first amended complaint against AJO in the Los Angeles Superior Court on January 31, 2003.

Nygard alleged: He is an internationally prominent figure who, among other things, is the chairman of one of North America's largest women's clothing and fashion manufacturing companies. He is a foreign national who occasionally occupies a corporate guest facility in Marina del Rey during his trips to California, and he owns and controls distribution facilities and warehouses in Los Angeles County.

As for AJO, it is a corporation headquartered in Finland and the publisher of 7 Paivaa Magazine (Seven Day Magazine) (the magazine) for worldwide distribution, including the United States and California. In addition, AJO operates a website which publishes articles that appear in the magazine, and the website is accessible to any computer anywhere with an internet connection, including computers in Los Angeles County.

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[1] An order of dismissal signed by a trial court and filed in the action constitutes a judgment and is effective for all purposes. (Code Civ. Proc., § 581d.) Further, an appeal lies from the grant of a motion to quash service of summons. (Code Civ. Proc., § 904.1, subd. (a)(3).)

The gravamen of the lawsuit is Nygard's claim he was defamed by an article which appeared in AJO's magazine and on its website. According to the article, which was published in Finnish, a court battle brought by fashion mogul Nygard against Linda Lampenius, a Finnish model, alleging character slander, ended in a determination Nygard's demands were not founded and that Lampenius was innocent. Contrary to the magazine article, Lampenius was not vindicated in that litigation. Instead, the matter ended in a settlement between Nygard and Lampenius in which "Lampenius publicly retracted her untrue and defamatory statements by placing full page retraction ads in publications at her sole expense . . . . "

Nygard claimed the false publication had damaged his reputation and stature in the business community, and that Californians of Finnish descent had read the magazine, viewed the website, and watched Finnish television via satellite. Further, due to the global reach of the internet from Finland to Los Angeles, "there are literally millions of potential buyers who may not buy [Nygard's] garments due to [AJO's] defamations."

Based on these allegations, Nygard pled causes of action against AJO for invasion of privacy, defamation, intentional and negligent interference with prospective economic advantage, and libel.

On February 13, 2003, the first amended complaint was served on AJO in Helsinki, Finland.

2. *AJO's motion to quash.*

On March 14, 2003, AJO filed a motion to quash service of summons and to dismiss for lack of personal jurisdiction. The motion was made on the grounds that: AJO does not do business in California; it does not have sufficient contacts in California; its conduct has not caused sufficient "effects" in California, either in general or against Nygard; it has not otherwise submitted itself to the jurisdiction of California courts in general or in relation to this matter in particular; Nygard is not a California citizen or resident, so that California has no interest in providing him a forum; any action by Nygard against AJO should be governed by the law of Finland and not California; prior to the commencement of this action, Nygard commenced, and there still is pending in

Finland, formal proceedings against two employees of AJO, based on the same transactions and occurrences and making essentially the same claims as those asserted herein; and it would not be fair or reasonable for California courts to exercise jurisdiction over AJO.

a. *AJO's evidentiary showing.*

AJO's motion was supported by seven declarations. Six of the declarants were AJO employees, including the magazine's editor-in-chief. The seventh declaration was from a Helsinki attorney whose firm represents AJO. The declarations provided in relevant part:

AJO is corporation formed under the laws of Finland. It does not have, and has never had, any United States citizens as shareholders, officers, directors or employees. AJO has never maintained an office, post office box, or telephone listing in California. AJO has never owned any real or personal property located in California. AJO has never had a California bank account. AJO has never registered or qualified as a company to do business in California. AJO has never advertised in California, nor has it ever solicited business in California. AJO has never paid any franchise fees or taxes in California. AJO has never had a California agent for any purpose. AJO has never commenced a lawsuit or any official proceeding in California.

The magazine is published only in Finland, in the Finnish language. AJO never had the article translated into English. At the time the article was published, the magazine had only 11 paying subscribers in the entire United States, and only one in California. The sole California subscriber was a Finnish citizen who was residing in California. Since then, that individual has ceased being a subscriber of the magazine in the United States, and that individual is currently a subscriber of the magazine in Finland. As of December 2003, the magazine has only 10 paying subscribers in the United States. Further, contrary to the allegations of the complaint, the magazine is not, and has never been sold at newsstands in the United States or California, by or for AJO. Subscribers outside of Finland can only obtain the magazine from AJO by mail from Finland.

Further, contrary to the allegations of the complaint, the subject article about Nygard was never published on, or accessible through, AJO's internet website. An audio/video tape of an interview containing some statements from the article was for a time accessible through the website. The tape was in the Finnish language. As of December 2003, there had been only 11 downloads of the audio/video tape at the website from the entire United States. There was no way of determining whether any of those downloads were from California.

Further, the subject magazine article had not been broadcast on Finnish television. In any event, Finnish television programs are not broadcast into the United States via satellite or otherwise.

The article was researched and written in Finland. The tape was made in Finland. At the time the article and tape were prepared, the author was unaware that anyone in the United States would be interested in, or read, the article, or would be interested in, or view, the tape.

3. *Nygard's opposition.*

In opposition to the motion to quash, Nygard filed a memorandum of points and authorities wherein he interposed evidentiary objections to various portions of AJO's moving declarations.[2] Nygard also requested a continuance to conduct discovery on jurisdictional issues. As for the merits, Nygard contended minimum contacts existed because AJO purposefully availed itself of California by conducting business here, and that it intentionally harmed Nygard's interests in California and expressly targeted Nygard's reputation in California.

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[2] The trial court overruled Nygard's objections, finding there was ample foundation for the challenged portions and that they were clearly relevant. Nygard does not seek review of the trial court's evidentiary rulings.

a. *Nygard's evidentiary showing.*

Nygard submitted two declarations in opposition to the motion to quash. However, the declarations were eviscerated by the trial court's evidentiary rulings. Therefore, Nygard has no jurisdictional facts to controvert the above showing made by AJO.

One of the declarations was by Rita Tainola-Tapiovaara, a staff reporter for a Finnish newspaper in Finland. The declaration pertained to Nygard's reputation among Finns. AJO moved to strike the declaration on the ground it was irrelevant to the issue of jurisdiction. The trial court sustained AJO's objected to said declaration in its entirety, ruling the declaration was "irrelevant to [the] motion to quash."

The second declaration was by Jeffrey Nadrich, Nygard's attorney. Nadrich purported to describe AJO's California contacts. AJO objected to Nadrich's declaration on various grounds, including lack of factual foundation or personal knowledge. The trial court sustained AJO's objection to paragraphs four through ten of the Nadrich declaration, except for a single sentence, for lack of foundation. That surviving sentence provides: "Defendant has admitted that [the magazine] has at least one subscriber in California and the true numbers of subscribers can only be determined by discovery."

In sum, as a consequence of these evidentiary rulings, which Nygard has not challenged the appeal, Nygard's opposition papers were left bereft of jurisdictional facts, leaving the jurisdictional facts in the moving declarations uncontroverted.

4. *Trial court's ruling.*

On April 28, 2003, the matter came on for hearing. The trial court denied Nygard's request for a continuance and disposed of the various evidentiary objections. As for the merits, as will be set forth in greater detail below, the trial court held AJO has insufficient contacts with California for general jurisdiction. Further, there was no basis for specific jurisdiction because there were no facts AJO had engaged in intentional conduct expressly aimed at, or targeting California, much less that AJO knew its conduct would cause harm to Nygard in California.

Nygard filed a timely notice of appeal from the order of dismissal.

CONTENTIONS

Nygard contends: the trial court erred in granting AJO's motion to quash because holding AJO accountable in California for its defamatory statements published in California relating to a California lawsuit and the harm suffered by the plaintiff in California would not offend traditional due process notions of fair play and substantial justice; and the trial court abused its discretion in denying Nygard the opportunity to conduct additional discovery to develop jurisdictional facts.

DISCUSSION

1. *Plaintiff's burden on motion to quash; scope of review.*

" '[T]he plaintiff has the initial burden of demonstrating facts justifying the exercise of jurisdiction.' [Citation.] If the plaintiff meets this initial burden, then the defendant has the burden of demonstrating 'that the exercise of jurisdiction would be unreasonable.' [Citation.] In reviewing a trial court's determination of jurisdiction, we will not disturb the court's factual determinations 'if supported by substantial evidence.' (*Ibid*.) 'When no conflict in the evidence exists, however, the question of jurisdiction is purely one of law and the reviewing court engages in an independent review of the record.' [Citation.]" (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 273.)

Here, as noted above, the trial court's evidentiary rulings rendered the jurisdictional facts in the moving papers uncontroverted. Therefore, the question of jurisdiction is one of law for our independent review.

2. *General principles.*

"California courts may exercise personal jurisdiction on any basis consistent with the Constitutions of California and the United States. (Code Civ. Proc., § 410.10.) The exercise of jurisdiction over a nonresident defendant comports with these Constitutions 'if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate " 'traditional notions of fair play and substantial justice.' " ' [Citations.]" (*Pavlovich, supra*, 29 Cal.4th at p. 268.)

Under the "minimum contacts test, 'an essential criterion in all cases is whether the "quality and nature" of the defendant's activity is such that it is "reasonable" and

"fair" to require him to conduct his defense in that State.' [Citations.] '[T]he "minimum contacts" test . . . is not susceptible of mechanical application; rather, the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present.' [Citations.]" (*Pavlovich, supra*, 29 Cal.4th at p. 268.)

In making this determination, "courts have identified two ways to establish personal jurisdiction. 'Personal jurisdiction may be either general or specific.' [Citation.]" (*Pavlovich, supra*, 29 Cal.4th at pp. 268-269.)

In this case, Nygard contends AJO is subject to both general and specific jurisdiction in California. The trial court properly found no basis for jurisdiction under either theory.

3. *AJO's activities in California are not so substantial or wide-ranging as to give rise to general jurisdiction.*

a. *Trial court's ruling.*

In holding AJO had insufficient contacts with California for general jurisdiction, the trial court noted the absence of any allegations that AJO "has or ever had any officers, shareholders, or employees in [California]," "has or ever had an office or mailing address or telephone listing in [California]," "has ever been licensed to do business in [California]," and "has ever paid taxes in [California]." Further, there was no allegation the "article [was] published anywhere other than Finland," or that the "article [was] written in any language other than Finnish."

b. *Cornelison case instructive.*

If a nonresident defendant's activities "may be described as 'extensive or wide-ranging' [citation] or 'substantial . . . continuous and systematic' [citation], there is a constitutionally sufficient relationship to warrant jurisdiction for all causes of action asserted against him. In such circumstances, it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum." (*Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.)

Cornelison, supra, 16 Cal.3d 143, illustrates the substantial showing required for *general* jurisdiction to attach. There, the plaintiff was a California resident whose

husband was killed in a highway collision with defendant's truck in Nevada. Plaintiff filed a wrongful death action in California. The trial court granted defendant's motion to quash on the ground the defendant had insufficient contacts with California for jurisdiction to attach. The Supreme Court reversed, finding sufficient grounds for specific jurisdiction, although no basis for *general jurisdiction*. (*Id*. at p. 146.)

The evidence in *Cornelison* showed that for seven years preceding the accident, defendant was engaged in the business of hauling goods by truck in interstate commerce. Defendant made approximately 20 trips a year to California in the operation of this business. The accident occurred while defendant was en route to California. At the time, defendant was hauling dry milk to the Star Kist Tuna Company in Long Beach, California, and intended to obtain cargo in California for a return shipment to an undesignated destination. Defendant was licensed to haul freight by the Public Utilities Commission of California, and had similar licenses issued by the regulatory agencies of several other states. Defendant's average cargo in any single trip to California had a value of approximately $20,000. Defendant acted as an independent contractor for several brokerage companies engaged in shipping, one of which was in California. (*Cornelison, supra*, 16 Cal.3d at pp. 146-147.)

Applying the controlling rules to these facts, the Supreme Court concluded that defendant's activities in California were not so substantial or wide-ranging as to justify general jurisdiction over defendant to adjudicate all matters regardless of their relevance to the cause of action alleged by plaintiff. (*Cornelison, supra*, 16 Cal.3d at p. 148.) It reasoned, "[i]n the present case, . . . defendant's activity in California consisted of some *20 trips a year into the state over the past 7 years* to deliver and obtain goods, an independent contractor relationship with a local broker, and a Public Utilities Commission license. In our view, these contacts are not sufficient to justify the exercise of jurisdiction over defendant without regard to whether plaintiff's cause of action is relevant to California activity." (*Id*. at p. 149, italics added.)

c. *Trial court properly found insufficient contacts for general jurisdiction.*

In view of the far more substantial showing made in *Cornelison*, which was deemed insufficient for general jurisdiction to attach, AJO's California activities, involving a single subscriber and perhaps a handful of downloads from its website, clearly do not subject it to general jurisdiction in this state. We conclude AJO's activities are not so substantial or wide-ranging as to justify general jurisdiction over AJO to adjudicate all matters asserted against it without regard to whether the cause of action is connected to AJO's business relationship to California.

4. *No basis for specific jurisdiction; no evidence that AJO expressly aimed its conduct at or intentionally targeted California.*

a. *The test for specific jurisdiction*

In determining "whether specific jurisdiction exists, courts consider the ' "relationship among the defendant, the forum, and the litigation." ' [Citations.] A court may exercise specific jurisdiction over a nonresident defendant only if: (1) 'the defendant has purposefully availed himself or herself of forum benefits' [citation]; (2) 'the "controversy is related to or 'arises out of' [the] defendant's contacts with the forum" ' [citations]; and (3) ' "the assertion of personal jurisdiction would comport with 'fair play and substantial justice' " ' [citations]." (*Pavlovich, supra,* 29 Cal.4th at p. 269.)

The purposeful availment inquiry " 'focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit he receives, to be subject to the court's jurisdiction based on' his contacts with the forum. [Citation.] Thus, the ' "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts [citations], or of the "unilateral activity of another party or a third person." [Citations.]' [Citation.] 'When a [defendant] "purposefully avails itself of the privilege of conducting activities within the forum State," [citation], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too

great, severing its connection with the State.' [Citation.]" (*Pavlovich, supra,* 29 Cal.4th at p. 269.)

In the "defamation context, the United States Supreme Court has described an 'effects test' for determining purposeful availment. [Citation.] In *Calder* [*v. Jones* (1984) 465 U.S. 783 [79 L.Ed.2d 804]], a reporter in Florida wrote an article for the National Enquirer about Shirley Jones, a well-known actress who lived and worked in California. The president and editor of the National Enquirer reviewed and approved the article, and the National Enquirer published the article. Jones sued, among others, the reporter and editor (individual defendants) for libel in California. The individual defendants moved to quash service of process, contending they lacked minimum contacts with California. (*Calder, supra,* 465 U.S. at pp. 785-786 [104 S.Ct. at pp. 1484-1485].)" (*Pavlovich, supra,* 29 Cal.4th at pp. 269-270.)

The United States Supreme Court disagreed "and held that California could exercise jurisdiction over the individual defendants 'based on the "effects" of their Florida conduct in California.' (*Calder, supra,* 465 U.S. at p. 789 [104 S.Ct. at p. 1487].) The court found jurisdiction proper because 'California [was] the focal point both of the story and of the harm suffered.' (*Ibid.*) 'The allegedly libelous story concerned the California activities of a California resident. It impugned the professionalism of an entertainer whose television career was centered in California . . . and the brunt of the harm, in terms both of [Jones's] emotional distress and the injury to her professional reputation, was suffered in California.' (*Id*. at pp. 788-789 [104 S.Ct. at p. 1486], fn. omitted.) The court also noted that the individual defendants wrote or edited 'an article that they knew would have a potentially devastating impact upon [Jones]. And they knew that the brunt of that injury would be felt by [Jones] in the State in which she lives and works and in which the National Enquirer has its largest circulation.' (*Id*. at pp. 789-790 [104 S.Ct. at p. 1487].)" (*Pavlovich, supra,* 29 Cal.4th at p. 270.)

Pavlovich recognized that "courts have 'struggled somewhat with *Calder*'s import, recognizing that the case cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction.'

(*Bancroft & Masters, Inc. v. Augusta Nat. Inc.* (9th Cir. 2000) 223 F.3d 1082, 1087 (*Bancroft*).)" (*Pavlovich, supra,* 29 Cal.4th at p. 270.)

Pavlovich observed that "[d]espite this struggle, most courts agree that merely asserting that a defendant knew or should have known that his intentional acts would cause harm in the forum state is not enough to establish jurisdiction under the effects test. (See *IMO [Industries, Inc. v. Kiekert AG* (3d Cir. 1998) 155 F.3d 254,] 265 ['we . . . agree with the conclusion reached by the First, Fourth, Fifth, Eighth, Ninth and Tenth Circuits that jurisdiction under *Calder* requires more than a finding that the harm caused by the defendant's intentional tort is primarily felt within the forum']; *Griffis v. Luban* (Minn. 2002) 646 N.W.2d 527, 534 [the United States Supreme Court 'did make it clear that foreseeability of effects in the forum is not itself enough to justify long-arm jurisdiction'].) Instead, the plaintiff must also 'point to contacts which demonstrate that the defendant *expressly aimed* its tortious conduct at the forum . . . ' (*IMO, supra,* 155 F.3d at p. 265.) For example, the Third Circuit Court of Appeals has held that, to meet the effects test, 'the plaintiff must show that the defendant knew that the plaintiff would suffer the brunt of the harm caused by the tortious conduct in the forum, and point to specific activity indicating that the defendant expressly aimed its tortious conduct at the forum.' (*IMO, supra,* 155 F.3d at p. 266.) Similarly, in the Ninth Circuit Court of Appeals, the plaintiff must show not only that the defendant 'caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state,' but also that the defendant 'committed an intentional act . . . expressly aimed at the forum state.' (*Bancroft, supra,* 223 F.3d at p. 1087.) Indeed, virtually every jurisdiction has held that the *Calder* effects test requires intentional conduct *expressly aimed at or targeting* the forum state in addition to the defendant's knowledge that his intentional conduct would cause harm in the forum. [Fn. omitted.]" (*Pavlovich, supra*, 29 Cal.4th at pp. 270-271.)

Pavlovich noted that "[a]t least one exception does, however, exist. In *Janmark, Inc. v. Reidy* (7th Cir. 1997) 132 F.3d 1200, the plaintiff, an Illinois corporation, and the defendants, California residents, were competitors who sold minishopping carts

worldwide. The defendants claimed that they owned a copyright in their cart design and threatened the plaintiff's New Jersey customer with contributory copyright infringement. Because of the threat, the customer stopped buying shopping carts from the plaintiff. Based on this incident, the plaintiff sued the defendants for tortious interference with prospective economic advantage. (*Id*. at p. 1201.) Although the defendants had no other contacts with Illinois, the Seventh Circuit Court of Appeals found that Illinois could exercise jurisdiction over the defendants *solely* because 'the injury and thus the tort occurred in Illinois.' (*Id*. at p. 1202.) In doing so, the Seventh Circuit apparently concluded that the state where the injury occurred – in this case, the plaintiff's residence – could always exercise jurisdiction over a nonresident defendant in the intentional tort context." (*Pavlovich, supra,* 29 Cal.4th at p. 272.)

Pavlovich continued, "Like most of our sister courts, we do not find *Janmark* persuasive. By making the location of the harm dispositive, *Janmark* ignores 'the defendant's knowledge and intent in committing the tortious activity' – the very focus of the purposeful availment requirement. (*IMO, supra,* 155 F.3d at p. 264.) Even if *Janmark* merely stands for the proposition that a defendant's knowledge that its tortious acts would cause the plaintiff injury in the forum state satisfies the effects test (see *IMO, supra,* 155 F.3d at p. 264, fn. 6), it is still problematic. '[F]oreseeability of causing *injury* in another State . . . is not a "sufficient benchmark" for exercising personal jurisdiction.' (*Burger King* [*Corp. v. Rudzewicz* (1985) 471 U.S. 462,] 474 [105 S.Ct. at p. 2183].) Rather, 'the foreseeability that is critical to due process analysis . . . is that the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there.' (*World-Wide Volkswagen* [*Corp. v. Woodson* (1980) 444 U.S. 286,] 297 [100 S.Ct. at p. 567].) The knowledge that harm will likely be suffered in the forum state, 'when unaccompanied by other contacts,' is therefore 'too unfocused to justify personal jurisdiction.' (*ESAB* [*Group, Inc. v. Centricut, Inc.* (4th Cir. 1997) 126 F.3d 617,] 625.) Thus, we decline to follow *Janmark* and its progeny [fn. omitted] *and join with those jurisdictions that require additional evidence of express aiming or intentional targeting.* In doing so, we are in accord with

those California decisions applying the effects test. [Fn. omitted.]" (*Pavlovich, supra,* 29 Cal.4th at pp. 272-273, italics added.) [3]

Having set forth the California Supreme Court's understanding of the United States Supreme Court's *Calder* decision, we now address whether AJO's contacts with California were sufficient to give rise to specific jurisdiction. But first, we set forth the trial court's ruling.

b. *Trial court's ruling.*

The trial court, relying on *Pavlovich, supra,* 29 Cal.4th 262, ruled Nygard failed to allege facts establishing specific jurisdiction, in that there were no facts to indicate AJO in any way had engaged in intentional conduct expressly aimed at, or targeting California, much less that AJO knew its intentional conduct would cause harm to Nygard in California. Therefore, there was no purposeful availment of benefits in California.

The trial court found *Calder, supra,* 465 U.S. 783, entirely distinguishable in that there, the defendants knew the brunt of the allegedly defamed actress's harm would be suffered in California because the actress lived and worked in California and the publication had its largest circulation in California. By contrast, Nygard is a Finnish citizen and resident with major business activities in Finland who occasionally travels to California.[4] Further, the allegedly defamatory statements were made in Finnish in a

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[3] Nygard relies on the Seventh Circuit's decision in *Janmark* and questions the application of stare decisis and the obligation of this court to follow the *Pavlovich* interpretation of *Calder*. The law in this regard is clear. As we stated in *Nordlinger v. Lynch* (1990) 225 Cal.App.3d 1259, 1275, " '[w]e are not permitted to violate stare decisis for the sake of straws in the wind. Our duty as an intermediate appellate court is to follow the decisional law laid down by the state Supreme Court. We violate jurisdictional bounds when we do otherwise. (*Auto Equity Sales, Inc. v. Superior Court* [1962] 57 Cal.2d 450 [20 Cal.Rptr. 321, 369 P.2d 937].)' (*Beckman v. Mayhew* (1975) 49 Cal.App.3d 529, 535 [122 Cal.Rptr. 604].)" Therefore, we adhere to *Pavlovich*'s interpretation of *Calder* and its criticism of *Janmark*.

[4] We fully agree with the trial court that *Calder* is distinguishable. There, the brunt of the harm was suffered in California. Here, assuming arguendo there was an injury to Nygard's reputation, the brunt of the harm would have occurred in Finland, where the article was published and where Nygard has some prominence.

Finnish magazine whose largest circulation is in Finland and which has at most a handful of readers in California.

The trial court further ruled that posting an article on a website is insufficient by itself to establish specific jurisdiction "because in so doing there was no purposefully directed activity toward [California]." Also, this controversy did not arise out of AJO's contacts with California.

Therefore, "exercising jurisdiction would not comport with fair play and substantial justice; to the contrary, it would be entirely unfair to subject [AJO] to jurisdiction in [California. I]ndeed, exercising jurisdiction here would be an unconstitutional violation of due process requirements that a [defendant] have minimum contacts with the state [*Internat. Shoe Co. v. Washington* (1945) 326 U.S. 310]."

c. *Trial court properly rejected Nygard's claim of specific jurisdiction; the evidence in the record fails to show AJO expressly aimed its alleged tortious conduct at, or targeted, California.*

As indicated, AJO's California contacts consisted of a sole subscriber to its magazine and perhaps a handful of downloads from its website. The essential question here is whether AJO's alleged knowledge its conduct would harm Nygard's reputation in California "is sufficient to establish express aiming at California." (*Pavlovich, supra,* 29 Cal.4th at p. 276.) Foreseeability of harm, without more, is insufficient to establish express aiming at the forum state. (*Id*. at pp. 277-278.) "[T]he *Calder* effects test requires intentional conduct *expressly aimed at or targeting* the forum state in addition to the defendant's knowledge that [its] intentional conduct would cause harm in the forum. [Fn. omitted.]" (*Id.* at p. 271.)

Here, as the trial court found, Nygard failed to present any evidence that AJO engaged in any intentional conduct expressly aimed at, or targeting, California. The fact that AJO published a magazine in Finland, which magazine conceivably could be read in California, or the fact that AJO operated a website, which website conceivably could be viewed in California, does not amount to conduct expressly aimed at, or targeting,

California. Therefore, the trial court correctly found California lacks specific jurisdiction over AJO.

5. *No abuse of discretion in denial of continuance.*

Finally, Nygard contends the trial court erred in denying his request for a continuance to conduct discovery which would have established California's jurisdiction over AJO. Nygard raised the request in his April 15, 2003 memorandum of points and authorities in opposition to AJO's motion to quash and dismiss. Nygard's counsel asserted that AJO had admitted it had at least one subscriber on California "and the true numbers of subscribers can only be determined by discovery." Nygard's papers further speculated there was a "possibility that Californians may have viewed the defamatory statements on [AJO's] website . . . ."

In denying a continuance, the trial court noted: "Complaint was filed 6/30/02, nearly 11 [months] ago, and [Nygard] . . . has not pursued facts to establish [AJO's] contacts with California to establish jurisdiction [¶] [Nygard] fails to show that discovery would likely produce evidence of additional contacts." The trial court's ruling was sound.

As the trial court noted, at the time Nygard requested a continuance, the action had been pending for nearly 11 months. There is no right to a continuance as a matter of law. (*Lerma v. County of Orange* (2004) 120 Cal.App.4th 709, 714.) Rather, "[t]he granting of a continuance for discovery lies in the discretion of the trial court, whose ruling will not be disturbed in the absence of manifest abuse." (*Beckman v. Thompson* (1992) 4 Cal.App.4th 481, 487.)

Nygard concedes, "It may be true, as the trial court opined, that plaintiff's counsel was less than diligent in propounding this discovery." Lack of diligence in discovery may justify the denial of a continuance request. (*Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 255-257.) In view of the admitted lack of diligence in discovery, and Nygard's failure to show discovery was likely to produce evidence of additional contacts, we perceive no abuse of discretion in the denial of a continuance.

DISPOSITION

The order is affirmed. AJO shall recover costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KLEIN, P.J.

We concur:

CROSKEY, J.

KITCHING, J.